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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/242,257	09/07/1999	JEAN GROLLET	RICHE4827.01	9828

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

20

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09243257

Applicant(s)

GROLLET

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 12-19-01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-18 & 20-29 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-18 & 20-29 are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10 and 21, drawn to a process for coating food products<sup>or</sup> bases, classified in class 426, subclass 302.
  - II. Claims 11-15, 24, 27 and 29 drawn to a composition for improving a food coating, classified in class 426, subclass 655.
2. III. Claims 16-18 and 20, drawn to a device for coating food products, classified in class 118, subclass 24.
3. IV. Claims 22 and 28 are drawn to a process for spraying a coating layer onto a base or substrate, classified in class 427, subclass 421.
4. V. Claims 23, 25 and 26, drawn to a coated food product, classified in class 426, subclass 89.
5. The inventions are distinct, each from the other because:
6. Inventions II and I or IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product, i.e. composition, can be used in a materially different process, e.g. a process in which the composition is mixed with food ingredients.
7. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another

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materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus or device as claimed can be used to practice another and materially different process, e.g. a process of coating thermoplastic material.

8. The process in IV. Does not require coating of a food product, as occurs in the process of I.
9. Inventions I and V are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process, e.g. a process wherein a first coating is applied to a food base by coextruding the coating and food base.
10. The composition in II. does not require use or application thereof by the device in III., and the device in III. Could be used to apply a coating composition other than the composition claimed in II., e.g. a chocolate or wax coating composition
11. The composition in II. ~~C~~ould be mixed with food ingredients rather than being a coating on a food product, as in V.
12. Inventions IV and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed in IV can be practiced by another and materially different device or apparatus, e.g. a

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device composed solely of spray nozzles without the presence of a means to provide sufficient contact time or a wrapping means, as used in the device of III.

13. Inventions III. and V. are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus or device as claimed is not an obvious apparatus or device for making the product, and the apparatus or device as claimed can be used to make a materially different product, e.g. a coated or painted plastic or wood product.

14. Inventions IV. and V. are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make a materially different product, e.g. a coated or painted plastic or wood product. Further, the product as claimed can be made by a materially different process, e.g. a process wherein a coating is applied by immersion of the base in the coating.

15. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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16. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

17. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 19, 2001 has been entered.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703 308-3850. The examiner can normally be reached on Tuesday-Friday from 10 AM to 7:30 PM. *and alternate Mondays.*

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3929. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9310<sup>1</sup> for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

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Corbin/af  
March 12, 2002

  
**ARTHUR L. CORBIN**  
**PRIMARY EXAMINER**  
3-12-02